

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PHH CORPORATION, PHH MORTGAGE
CORPORATION, PHH HOME LOANS, LLC,
ATRIUM INSURANCE CORPORATION, AND
ATRIUM REINSURANCE CORPORATION,

Petitioners,

v.

CONSUMER FINANCIAL PROTECTION
BUREAU,

Respondent.

Case No. 15-1177

PETITIONERS' STATEMENT OF ISSUES TO BE RAISED

Pursuant to this Court's Order of June 24, 2015, petitioners PHH Corporation, PHH Mortgage Corporation, PHH Home Loans, LLC, Atrium Insurance Corporation, and Atrium Reinsurance Corporation (collectively "PHH") respectfully submit this non-binding statement of issues to be raised in this appeal, which seeks review of the final agency action of the Consumer Financial Protection Bureau ("CFPB") captioned *In the Matter of PHH Corporation, et al.*, Decision of the Director, Docket No. 2014-CFPB-0002, Dkt. 226 (June 4, 2015) ("Decision"), and Final Order, Docket No. 2014-CFPB-0002, Dkt. 227 (June 4, 2015) ("Order").

The CFPB filed a notice of charges against PHH on January 29, 2014, alleging that PHH violated Section 8 of the Real Estate Settlement Procedures Act (“RESPA”) when it referred borrowers of loans originated or purchased by PHH to mortgage insurers that agreed to obtain mortgage reinsurance from a PHH subsidiary. On November 25, 2014, an Administrative Law Judge (“ALJ”) found PHH liable under RESPA, ordered it to pay \$6.4 million in disgorgement, and issued an injunction barring various forms of conduct. On appeal of the ALJ’s decision, the Director of the CFPB issued the Decision and Order, which adopted novel interpretations of RESPA that increased the disgorgement amount to \$109 million. In doing so, the Director rejected years of interpretive guidance by the Department of Housing and Urban Development, which was charged with enforcement authority under RESPA until the CFPB was created. The Director also ordered injunctive relief that, among other things, prohibited PHH from violating Section 8 of RESPA or referring borrowers to real estate settlement service providers in exchange for the service provider’s agreement to purchase any PHH service, and imposed onerous record-keeping and information-collecting burdens on PHH.

PHH has timely appealed the Director’s decision to this Court. On June 26, 2015, PHH filed a motion seeking a stay of the Decision and Order pending

judicial review. The CFPB filed a response on July 6, 2015, and PHH filed a reply on July 16, 2015.

PHH intends to raise some or all of the following issues on review:

1. Whether the Decision and Order violate due process by retroactively applying new interpretations of RESPA to prohibit conduct that was, at the time of the conduct, expressly permitted by agency regulations and guidance.
2. Whether the unprecedented structural features of the CFPB, which combine legislative, executive, and judicial power in the hands of a single individual, violate the separation of powers.
3. Whether the Decision's interpretation of RESPA's Section 8 is contrary to RESPA, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
4. Whether the Decision erroneously shifted the burden of proof from the government to Petitioners to prove that their mortgage reinsurance relationships were exempt from liability under RESPA.
5. Whether the injunctive relief and disgorgement provisions of the Decision and Order are overbroad, vague, unduly burdensome, *ultra vires*, unsupported by evidentiary and factual foundation, or otherwise invalid.

Dated: July 24, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 24, 2015, I filed the foregoing Statement of Issues To Be Raised with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit using the CM/ECF system. Service was accomplished by the CM/ECF system on the following counsel for respondent Consumer Financial Protection Bureau, who is a registered CM/ECF user:

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